

The Facts About HB 4561

Opponents say: HB 4561 will limit the updating of the state's construction code to once every six years.

FACT: The flexible code cycle in HB 4561 gives the state the option to update Michigan's construction code either every three years or every six years as they believe is necessary.

Opponents say: The flexible code cycle in HB 4561 will stop new products and new technologies from being introduced, sold and used in Michigan.

FACT: *HB 4561 (H-1) contains language that automatically allows for the use of new products and technologies provided for in an interim edition of one of the listed codes used by the state without any further need for testing or state approval, even if the state skips that edition.*

Opponents say: HB 4561 will prevent the state from adopting new codes or standards.

FACT: HB 4561 does not block the adoption of new codes and standards. It does require any future additions of unlisted codes to the mandatory construction codes be approved by the state legislature and not through the administrative rules process. This safeguards against other codes and standards being substituted for an existing code or standard or adopted without legislative approval.

Opponents say: The flexible code cycle in HB 4561 will put us out of step with the rest of the country which adopts the newest code every three years.

FACT: The truth is actually quite the opposite. HB 4561 will bring Michigan in step with the rest of the country. 35 other states and the District of Columbia already are on a flexible code cycle including all of our neighboring states. Indiana is on the 2006 International Building Code, the 2003 International Residential code, the 2006 International Mechanical Code, the 2008 NEC and the 1997 Uniform plumbing code. Minnesota is on the 2006 I-codes. Ohio is on the 2006 I-codes. Pennsylvania is on the 2009 I-codes. New York's 2010 codes are based on the 2006 I-codes. But local governments in NY can use a different code. Albany is on the 2000 I-codes. New York City is on the 2003 I-codes. Syracuse is on the 2002 edition of the state code which is based on the 2000 edition of the I-codes.

Illinois also allows local adoption of codes and at least 30 different construction codes are in use in Illinois ranging from the 1993 state plumbing code to the 1996 BOCA Building Code to the 2006 International Building Code.

And the National Building Code of Canada is only updated once every five years.

For more information on what codes are used where,
look behind the Reed Construction Data code list tab.

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HB 4561 (H-1) Substitute

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**Questions & Answers about
HB 4561**

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Background Material

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**Reed Construction Data List of
Construction Codes
Currently in Use by State**

5

**SUBSTITUTE FOR
HOUSE BILL NO. 4561**

A bill to amend 1972 PA 230, entitled
"Stille-DeRossett-Hale single state construction code act,"
by amending section 4 (MCL 125.1504), as amended by 2004 PA 584.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) The director shall prepare and promulgate the
2 state construction code consisting of rules governing the
3 construction, use, and occupation of buildings and structures,
4 including land area incidental to the buildings and structures, the
5 manufacture and installation of building components and equipment,
6 the construction and installation of premanufactured units, the
7 standards and requirements for materials to be used in connection
8 with the units, and other requirements relating to the safety,
9 including safety from fire, and sanitation facilities of the



1 construction costs unnecessarily or restrict the use of new
2 materials, products, or methods of construction, or provide
3 preferential treatment to types or classes of materials or products
4 or methods of construction.

5 (e) To ~~insure~~**ENSURE** adequate maintenance of buildings and
6 structures throughout this state and to adequately protect the
7 health, safety, and welfare of the people.

8 (f) To provide standards and requirements for cost-effective
9 energy efficiency that will be effective April 1, 1997.

10 (g) Upon periodic review, to continue to seek ever-improving,
11 cost-effective energy efficiencies.

12 (h) ~~The development of~~ **TO DEVELOP** a voluntary consumer
13 information system relating to energy efficiencies.

14 (4) The code shall be divided into sections as the director
15 considers appropriate including, without limitation, building,
16 plumbing, electrical, and mechanical sections. The boards shall
17 participate in and work with the staff of the director in the
18 preparation of parts relating to their functions. Before the
19 promulgation of an amendment to the code, the boards whose
20 functions relate to that code ~~shall be permitted to~~ **MAY** draft and
21 recommend to the director proposed language. The director shall
22 ~~give consideration to~~ **CONSIDER** all submissions by the boards.
23 However, the director has final responsibility for the promulgation
24 of the code.

25 (5) ~~The code may incorporate the provisions of a code,~~
26 ~~standard, or other material by reference. The director shall add,~~
27 ~~amend, and rescind rules to update the code not less than once~~



Q&A HB 4561

1. What's the reason for moving from three-year code promulgation cycle to a flexible promulgation cycle?

There are two reasons for going to a flexible cycle: flexibility and the cost of updating the code every three years.

2. Won't moving from a three-year to a flexible cycle mean some manufacturer's products won't be approved for use in Michigan and consequently can't be sold here?

No. It is not the intent of the code to create a market for someone's product or service. Proprietary products are not recognized in the codes. Mentioning thousands of such products would be unmanageable and certainly unfair to complying products not mentioned. The codes include minimum design/performance requirements and in some instances prescriptive guidance. They also set forth limitations and conditions of use. Products must meet performance and manufacturing requirements to "comply with the code."

As an example, although it's not specifically recognized in Michigan's 2009 code, Dow's revolutionary POWERHOUSE™ Solar Shingle complies with all of the 2009 code requirements and is being used across Michigan including on Michigan's First Zero Energy Home built by Cobblestone Homes in Bay City.

*Product approval is not solely a function of the national model codes and it never was. In Michigan we currently have two different but complementary methods of gaining product approval even in the middle of a code's being enforced. **And HB 4561 contains a third, automatic, method for gaining product approval between adopted editions of the code.***

FIRST, MCL 125.1521 of the Single State Construction Code Act sets out a very specific much-used method to "Petition for approval of materials, products and methods; testing and evaluation; certificate of acceptability." The language of the law may be found in the document "Approval of materials" attached to this memo. Manufacturers generally use this method because it deals with approval for the entire state.

A 15-page document from the Bureau of Construction Codes listing all "materials, products and methods that have been approved by the Construction Code Commission from January 1, 1999, to present," has been attached. These approvals are done by the State Construction Code Commission which meets every three months.

The 2009 SCCC product approval for the TEC HydraFlex Waterproofing Crack Isolation Membrane manufactured by Specialty Construction Brands out of Palatine, Illinois has also been attached. Please note the approval specifies all requirements of the Michigan

"Attracting New Investment to Michigan

Dow is taking a leadership role in working to revitalize Michigan's economy. One way the company is trying to do this is by attracting new investment to Michigan Operations, Dow's largest manufacturing site in Michigan.

To remain globally competitive, the site continues to make the financial and cultural changes necessary to attract business investments. Since the late 1990s, site leaders have developed and implemented a strategic plan to expand the skills of our workforce; improve environmental, health, and safety and operational performance; and lower costs to make the site's operations globally competitive. This effort has resulted in Michigan Operations attracting approximately \$500 million in new investments and the creation or retention of more than 400 full-time jobs since 2004.

Businesses that make Michigan Operations the site of choice are attracted by:

- **Our capability to run complex chemistry processes**
- **Employees who are flexible and ready for change, and a labor contract that enables flexibility**
- **Our strong technical resource base**
- **World class research and development and analytical capability**
- **Unique regulatory expertise**
- **Ability to run plants that meet current good manufacturing practices (cGMP)**
- **Full service environmental capabilities**
- **An excellent track record for start-up with new molecules"**

You won't find a word in there about a three-year code cycle attracting new investment or companies to Michigan.

4. Won't moving from a mandatory three-year code cycle to a flexible code cycle hurt home owner and business property insurance rates in Michigan because we'll get a lower building code effectiveness grade from the Insurance Services Office's Building Code Effectiveness Grading Schedule?

No. The information on the next page comes from the ISO website and may help clarify the lack of practical effect of a flexible cycle versus a three-year cycle on ISO BCEGS ratings.

- incentives for outside education/certification
- building officials' qualifications
- contractor/builder licensing and bonding
- public-awareness programs
- participation in code-development activities and the appeal process

Review of building plans, including:

- staffing levels
- qualifications
- level of detail of plan review
- performance evaluations
- review of plans for one- and two-family dwellings, multifamily dwellings, and commercial buildings

Field inspections, including:

- staffing levels
- qualifications
- level of detail of inspections
- performance evaluations
- final inspections
- issuance of certificates of occupancy

In addition, ISO collects underwriting information, including natural hazards common to the area, number of inspection permits issued, number of inspections completed, the building department's funding mechanism and date of establishment, size of the jurisdiction and population, and fair market value of all buildings”.

You'll note that what code edition is in use is only one of 21 different classification categories used to arrive at an ISO BCEGS grade and not the most important one at that.

The information below is from the League of Minnesota Cities Insurance Fund study on the effects of ISO BCEGS on municipal insurance rates.

“Staffing is the most important single factor, and accounts for over 60% of the total rating. The BCEGS looks at whether the city has enough code enforcement staff for the numbers of permits, plan reviews, and inspections the city handles; the staff's background and experience; the ongoing training staff receives; and the city's practices in supervising and evaluating the code enforcement

The recommended credits from ISO don't apply to the entire property premium; they're applied only to the “extended perils” portion of the premium. Every insurance company sets its own rates, and it is the decision of the insurance company to adopt ISO's recommended premium credit schedule.”

8. Won't going to a flexible cycle harm public safety?

No. A majority of changes made in each edition of the codes are either editorial/administrative/technical in nature or minor changes. Very few changes are substantive.

The 2009 International Residential Code (IRC) which serves as the basis for the Michigan Residential Code had one hundred and twenty-two changes made from the 2006 IRC. Sixty-two (50.8%) of the changes were editorial/administrative/technical in nature. Fifty-four (44.3%) percent were minor. Only six (4.9%) were substantive.

The 2006 edition of this code had one hundred and sixty three changes of which one hundred and fourteen (70%) were editorial/administrative/technical, forty three (26%) were minor and six (4%) were substantive.

The 2003 IRC had ninety seven changes. Fifty nine (61%) were editorial/administrative/technical, thirty four (35%) were minor and 4 (4%) were substantive.

And again, in case of imminent danger to human safety, the department may institute an emergency rule without going through the normal promulgation process.

9. Can you give examples from the 2009 IRC of what change falls into what category?

The 2009 IRC contains a new section entitled "Fire-Resistant Construction." This new section consolidates all of the fire-resistant construction requirements that used to be scattered throughout the IRC. None of these requirements changed, they were just moved to one section of the code to make them easier to find. That's an editorial change.

A new section was added to the 2009 IRC that states that anyone who commences work requiring a permit before they actually receive a permit is subject to a fee established by the applicable governing authority. That's an administrative change.

Certain types of liquid sealants were added as approved duct system sealants to the 2009 IRC. That's a technical change.

The 2009 IRC makes ducts that have spray polyurethane foam applied to their exterior exempt from the requirement to be wrapped with a vapor retarder. That is a minor change.

Carbon monoxide detectors are now required in all new dwelling units which have fuel-fired appliances or an attached garage and in existing homes when work requiring a permit is done. This is a substantive change. This is also a requirement that Michigan has had for several years.

became effective March 9th of this year. Even before these codes went into effect plans were underway to begin the promulgation of the 2012 codes.

The code development and promulgation in Michigan has become an overly expensive, never-ending process that yields little in terms of safer dwellings for Michigan citizens but is a multi-million dollar bonanza for the organizations that write and sell their books every three years.

The 2009 Michigan Residential Code went into effect in March 9th of this year. But even before the new code was in place, the Bureau of Construction Codes was beginning the state's code promulgation process for the next edition.

Constantly churning codes solely for the sake of adopting the latest version and not because it is needed not only adds unnecessary complexity to the construction process, it can actually harm public safety by not giving either inspectors or contractors a chance to fully understand and implement one set of code changes before having to deal with another.

Customer Base	Code book(s)	Cost per book* Member Pricing	Total
61,113 Builder/M&A Licensees	Michigan Residential Code	\$81.50	\$4,980,709.50
13,743 Company/office licenses	Michigan Residential Code	\$81.50	\$1,120,054.50
8,083 Mechanical Licenses	Michigan Mechanical Code	\$62.00	\$501,146.00
12,363 Plumbing Licenses	Michigan Plumbing Code	\$62.00	\$766,506.00
27,516 Electrical Licenses	NFPA National Electrical Code with Michigan amendments in a separate document	\$76.50	\$2,104,974.00
5,629 Licensed Architects	2009 Michigan Code Bundle	\$356.95	\$2,009,271.55
5,629 Licensed Architects	NFPA National Electrical Code with Michigan amendments in a separate document	\$76.50	\$430,618.50
893 Local Building Departments	2009 Michigan Code Bundle	\$356.95	\$318,756.35
893 Local Building Departments	NFPA National Electrical Code with Michigan amendments in a separate document	\$76.50	\$68,314.50
1,033 Building Inspectors	Michigan Residential Code	\$81.50	\$84,189.50
1,033 Building Inspectors	Michigan Building Code	\$99.50	\$102,783.50
1,033 Building Inspectors	Michigan Rehabilitation Code For Existing Buildings	\$66.00	\$68,178.00
382 Mechanical Inspectors	Michigan Mechanical Code	\$62.00	\$23,684.00

States with no mandatory code adoption cycle

**Alabama
Alaska
Arizona
Colorado
Connecticut
D. C.
Delaware
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Massachusetts
Minnesota
Mississippi
Missouri
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina
North Dakota
South Dakota
Ohio
Rhode Island
Texas
Utah
Vermont
Virginia
West Virginia
Wisconsin**

Department of Public Safety – protecting citizens and communities
Department of Labor and Industry – a trusted resource utilized by employees, employers and property owners



February 23, 2009

To: Code Officials, Design Professionals and Other Interested Parties

Subject: 2009 International Code Adoptions

The 2009 editions of the International Residential Code (IRC), International Building Code (IBC), and International Fire Code (IFC) will be published soon and the Construction Codes and Licensing Division and the State Fire Marshal Division have been discussing this adoption. Given the drastic slowdown of the construction economy, we feel it is not the appropriate time to be updating regulations. The economic based factors include:

- The availability of volunteers for technical advisory committees, given cut backs in code jurisdictions, among design professionals and product suppliers.
- The staff time involved by our state agencies for both the committee work and the rules process under the Administrative Procedures Act.
- The cost of code books and reference materials for townships, cities, counties, state agency offices, design professionals and other industry members.
- The cost of training for builders, designers, code officials and other industry members and the focus of the training on changes rather than other critical concepts.

Based on the above criteria, we will not be moving forward with the adoption of the 2009 IRC, IBC or IFC and will strive to have our advisory committees and the state fire chief's code committee ready to review the 2012 editions of these codes.

Sincerely,

Steve Hernick
State Building Official

Jerry Rosendahl
State Fire Marshal